

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 616/Mum/2020 (Assessment Year : 2004-05)
I.T.A. No. 644/Mum/2020 (Assessment Year : 2005-06)

Ketan Sureshchandra Shah F/4, Nimesh Apartment S.V.P. Road Mumbai-400 092. AAGPS8948B (Appellant)	Vs.	ITO-25(2)(1) Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Shashi Bekal
Department by	Shri Prakash Mane
Date of Hearing	20.10.2021
Date of Pronouncement	03.01.2022

ORDER

These appeals by the assessee are directed against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 29.11.2019 pertain to A.Ys. 2004-05 & 2005-06.

2. Since the issues are common and connected and appeals were heard together, these are being disposed of by this common order, for the sake of convenience.

3. Grounds of appeal for A.Y. 2004-05 read as under :-

1. The learned CIT(A) erred in confirming the disallowance of following expenses without appreciating that said expenses are incurred wholly and exclusively for business and allowable u/s. 37.

Maintenance	Rs. 9,810/-
Conveyance Expenses	Rs. 44,000/-
Electricity Expenses	Rs. 3,240/-
Telephone Expenses	Rs. 26,800/-
Salary Expenses	Rs. 1,04,000/-
Subscription Expenses	Rs. 7,835/-
Car Insurance Expenses	Rs. 2,348/-
Depreciation	Rs. 10,685/-

Misc. Expenses	Rs. 36,500/ -
Total	Rs. 2,45,218/-

4. Brief facts are that the assessee is a professor with M/s. Ideal Classes Pvt. Ltd. and is getting remuneration for services rendered as a professor. During the course of assessment proceedings in the case of M/s. Ideal Classes Pvt. Ltd., the director in his statement u/s. 131 before the DCIT-9(2), Mumbai has stated that all the material pertaining to teaching are provided by the classes and the professors are not required to incur any expenditure. Considering that the assessee has declared professional receipts from M/s. Ideal Classes Pvt Ltd. amounting to Rs. 4,56,600/- and has claimed expenses of Rs. 2,46,918/- which are not allowable as the same are provided by the classes and not by professors. Therefore, AO held that the income shown under the head 'business income' is in the nature of income from salary. That only professional tax paid is allowable expenditure against such income. Therefore, the expenses to the tune of Rs. 2,45,218/-(Rs. 2,46,918 - Rs.1700) were disallowed and added back to the total of the assessee by the AO.

5. Upon assessee's appeal learned CIT(A) accepted that the assessee's income should be assessed under business and profession. He however confirmed the disallowance by rejecting the evidences submitted before him. He held as under :-

“As regards to disallowance of expenses to the tune of Rs. 2,45,218/-, the appellant has submitted only month-wise bifurcation. However, the appellant has not submitted any proof in support of his claim. During the appellate proceedings, the appellant vide letter of this office dated 27.09.2019 was requested to submit the documents/details which were submitted before the Ld. AO during the course of assessment proceedings to substantiate the claim of expenses. In response, to the same, the appellant has submitted the copies of details and submissions made before the Assessing Officer and from perusal of same it is observed that therein also the appellant has not submitted any proof of expenses claimed. It is also not the case of the appellant that during the appellate proceedings, he has submitted proof in support of expenses claimed, as additional evidences. Once in his statement u/s 131 of the Act before the DCIT-9(2), Mumbai, the Director of M/s Ideal Classes Pvt Ltd has stated that all the materials pertaining to teaching are provided by the classes and the professors are not required to incur any expenditure, heavy onus was casted on the appellant to prove the genuineness of the expenses which he had claimed. Since, the appellant has

not submitted any proof in support of claim of various expenses, so it cannot be said that he has discharged his onus, In view of the facts and circumstances of the case, I am of the considered opinion that no fault can be found with the action of the Ld. AO in disallowing said claim of expenses at Rs. 2,45,218/-. Hence, the impugned disallowance at Rs.2,45,218/- is CONRRMED.

6. Against the above order assessee is in appeal before the ITAT.
7. I have heard both the parties and perused the records. Upon careful consideration, I note that the assessment as above has resulted in profit rate of 100% from the profession. When Ld.CIT(A) is accepting that income should be assessed under the head business and profession, this is totally unreasonable and unacceptable. Moreover, rejecting assessee's evidences summarily is also improper. On the facts and circumstances of the case in my opinion 50% estimate of profit would meet the ends of justice. I direct accordingly. The above adjudication shall apply mutatis mutandis to A.Y. 2005-06.
8. In the result, assessee's appeals are partly allowed.

Pronounced in the open court on 03.01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 03/01/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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